

AMENDED IN SENATE JULY 2, 2013  
AMENDED IN SENATE JUNE 17, 2013  
AMENDED IN ASSEMBLY MAY 29, 2013  
AMENDED IN ASSEMBLY APRIL 10, 2013  
AMENDED IN ASSEMBLY MARCH 18, 2013  
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 763**

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**Introduced by Assembly Member Buchanan**

February 21, 2013

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An act to add Section 48.5 to the Fish and Game Code, and to add Section 64.5 to the Harbors and Navigation Code, relating to aquatic invasive plants.

### LEGISLATIVE COUNSEL'S DIGEST

AB 763, as amended, Buchanan. Aquatic invasive plants: control and eradication.

Existing law designates the Department of Boating and Waterways as the lead agency of the state for the purpose of cooperating with agencies of the United States and other public agencies in controlling certain invasive plants in the Sacramento-San Joaquin Delta, its tributaries, and the marsh, and authorizes the department to furnish money, services, equipment, and other property for the control of those invasive plants.

This bill would additionally designate the department as the lead agency of the state for the purpose of cooperating with other state, local, and federal agencies in identifying, detecting, controlling, and

administering programs to manage invasive aquatic plants, as defined, in the Sacramento-San Joaquin Delta, its tributaries, and the Suisun Marsh. The bill would authorize the department, in consultation with appropriate state, local, and federal agencies, and upon concurrence from the Department of Fish and Wildlife following the completion of a specified assessment described in the bill, to take such action it determines is necessary to implement control and, when feasible, eradication measures for those invasive aquatic plants.

This bill would require the department to regularly consult with the United States Department of Agriculture, the United States Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, the University of California, and other members of the scientific and research communities, and other state agencies with authority over the control of invasive aquatic plants, to determine which species of those plants should be given the highest priority for management and to determine the best control, and, when feasible, eradication measures. The bill would also require the department, after consulting with those entities, if it identifies a species of ~~invasive~~ aquatic plant that may need to be controlled or eradicated, to notify the Department of Fish and Wildlife of the potential threat from that ~~invasive~~ aquatic plant.

The bill would require the Department of Fish and Wildlife, after receipt of that notice, in consultation with other appropriate local, state, and federal agencies, to conduct a risk assessment of that ~~invasive~~ aquatic plant species to determine whether the plant species presents a threat to the environment, economy, or human health, as determined after consideration of specified factors. *The bill would require the risk assessment to specify whether the aquatic plant under consideration has been determined to be an invasive aquatic plant.* The bill would require the Department of Fish and Wildlife, *within 30 days* after completing that assessment, to report its findings to the department so that the department may take any necessary action to control and, when feasible, eradicate an invasive aquatic plant, as authorized under the bill. The bill would also define the term “invasive aquatic plant” for purposes of the Fish and Game Code.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. The Legislature finds and declares all of the following:

(a) The spread of invasive aquatic plants is a continuing problem in the Sacramento-San Joaquin Delta, its tributaries, and the Suisun Marsh.

(b) Invasive aquatic plants impact the Sacramento-San Joaquin Delta, its tributaries, and the Suisun Marsh by creating navigational obstructions and hazards for boats and other watercraft; impairing recreational activities such as swimming, fishing, and hunting; damaging water supply infrastructure and flood protection systems; altering water quality; and degrading the physical and chemical characteristics of fish and wildlife habitat.

(c) Coordinated, early-stage response to introductions of invasive aquatic plants is critical to long-term control and management of those invasive species to protect the state's environment, economy, and human health from harmful impacts of those invasive species.

(d) Authorizing the Department of Boating and Waterways to cooperate with other state, federal, and local agencies in the identification and management of invasive aquatic plants in-lieu of requiring that the department undertake legislative action each time a new species of invasive aquatic plant is identified, would enable the state to manage and control invasive aquatic plants in the Sacramento-San Joaquin Delta, its tributaries, and the Suisun Marsh in a more cost-efficient and effective manner than is currently implemented.

SEC. 2. Section 48.5 is added to the Fish and Game Code, to read:

48.5. (a) (1) "Invasive aquatic plant" means an aquatic plant or ~~alga~~ *algae species*, including its seeds, fragments, and other biological materials capable of ~~propagating~~ *propagating*, that ~~plant or alga, that is usually not native to an area, and whose establishment meets the following criteria:~~

(A) *It is nonnative to an area.*

(B) *Its establishment and spread causes or is likely to cause harm to native any of the following:*

(i) *Native species and their ~~habitat~~, the habitat.*

1 (ii) *The economy, including the viability of commercial,*  
2 *agricultural, aquacultural, or recreational activities; and human*  
3 *activities.*

4 (iii) *Human health. Aquatic*

5 (2) *For purposes of this section, “invasive” denotes the*  
6 *uncontrolled or unintended spread of the species into a nonnative*  
7 *environment.*

8 (b) *Aquatic plants shall be determined to be invasive through*  
9 *the risk assessment required to be completed by the department in*  
10 *consultation with the Department of Boating and Waterways and*  
11 *other state, local, and federal agencies pursuant to subdivision (c)*  
12 *of Section 64.5 of the Harbors and Navigation Code.*

13 SEC. 3. Section 64.5 is added to the Harbors and Navigation  
14 Code, to read:

15 64.5. (a) The department is designated as the lead agency of  
16 the state for the purpose of cooperating with other state, local, and  
17 federal agencies in identifying, detecting, controlling, and  
18 administering programs to manage invasive aquatic plants in the  
19 Sacramento-San Joaquin Delta, its tributaries, and the Suisun  
20 Marsh. The department, in consultation with appropriate state,  
21 local, and federal agencies, may take such action it determines is  
22 necessary, upon concurrence from the Department of Fish and  
23 Wildlife following the completion of the risk assessment described  
24 in subdivision (c), to implement control and, when feasible,  
25 eradication measures for invasive aquatic plants. Any actions taken  
26 to control invasive aquatic plants shall be in compliance with all  
27 applicable laws and regulations and conducted in an  
28 environmentally sound manner.

29 (b) The department shall regularly consult with the United States  
30 Department of Agriculture, the United States Fish and Wildlife  
31 Service, the National Oceanic and Atmospheric Administration,  
32 the University of California, and other members of the scientific  
33 and research communities, as well as other state agencies with  
34 authority over the control of invasive aquatic plants to determine  
35 which species of those plants should be given the highest priority  
36 for management and determine the best control and, when feasible,  
37 eradication measures.

38 (c) (1) After consulting with the various entities as required in  
39 subdivision (b), if the department identifies a species of ~~invasive~~  
40 aquatic plant that may need to be controlled or eradicated, the

1 department shall notify the Department of Fish and Wildlife of the  
2 potential threat from that plant species. After receipt of that notice,  
3 the Department of Fish and Wildlife, in consultation with other  
4 appropriate local, state, and federal agencies, including, but not  
5 limited to, the Department of Food and Agriculture, the Department  
6 of Water Resources, the State Water Resources Control Board,  
7 the Department of Pesticide Regulation, and the Office of  
8 Environmental Health Hazard Assessment, shall conduct a risk  
9 assessment of the ~~invasive~~ aquatic plant species identified by the  
10 department to determine whether the plant species presents a threat  
11 to the environment, economy, or human health. In making that  
12 determination, the department shall take prompt action to minimize  
13 detrimental impacts and costs of management, and shall consider  
14 all of the following:

15 ~~(A) Whether the invasive aquatic plant species may obstruct~~  
16 ~~navigation and recreational uses of waterways.~~

17 ~~(B)~~

18 (A) Whether the ~~invasive~~ aquatic plant species may cause  
19 environmental damage, including threats to the health and stability  
20 of fisheries, impairment to birds' access to waterways and nesting,  
21 roosting, and foraging areas, deterioration of water quality resulting  
22 from plant decay, and harm to native plants.

23 *(B) Whether the aquatic plant species may obstruct navigation*  
24 *and recreational uses of waterways.*

25 (C) Whether the ~~invasive~~ aquatic plant species may cause harm  
26 to the state's economy, infrastructure, or manmade facilities such  
27 as state water storage facilities and pumping operations, by  
28 increasing flood risk, threatening water supplies by blocking  
29 pumps, canals, and dams necessitating early control efforts.

30 (2) Based on factors specified in subparagraphs (A), (B), and  
31 (C) of paragraph (1) and any other environmental, economic, or  
32 human health impacts, the risk assessment shall specify whether  
33 the plant species under consideration has been determined to be  
34 an invasive aquatic plant. Findings from the risk assessment shall  
35 be documented in a way that clearly describes the severity and  
36 types of impacts caused by a plant species determined to be an  
37 invasive aquatic plant.

38 (3) ~~After~~ *Within 30 days after* completing the risk assessment  
39 required by paragraph (1), the Department of Fish and Wildlife  
40 shall report its findings to the department so that the department

1 may take any necessary action to control and, when feasible,  
2 eradicate an invasive aquatic plant, as authorized under subdivision  
3 (a).

4 (d) (1) For purposes of this section, “invasive aquatic plant”  
5 means an aquatic plant or ~~alga~~ *algae species*, including its seeds,  
6 fragments, and other biological materials capable of ~~propagating~~  
7 *propagating*, that ~~plant or alga, that is usually not native to an area,~~  
8 ~~and whose establishment meets the following criteria:~~

9 (A) *It is nonnative to an area.*

10 (B) *Its establishment and spread causes or is likely to cause*  
11 *harm to native any of the following:*

12 (i) *Native species and their ~~habitat~~; the habitat.*

13 (ii) *The economy, including the viability of commercial,*  
14 *agricultural, aquacultural, or recreational activities; and human*  
15 *activities.*

16 (iii) *Human health. Aquatic*

17 (2) *For purposes of this section, “invasive” denotes the*  
18 *uncontrolled or unintended spread of the species into a nonnative*  
19 *environment.*

20 (e) *Aquatic* plants shall be determined to be invasive through  
21 the risk assessment required to be completed by the Department  
22 of Fish and Wildlife in consultation with the department and other  
23 state, local, and federal agencies pursuant to subdivision (c).

24 (e)

25 (f) This section shall not be construed to imply that water  
26 hyacinth (*Eichhornia crassipes*) or Brazilian elodea (*Egeria densa*)  
27 can be successfully eradicated. However, control of these  
28 populations shall be attempted pursuant to Section 64. Eradication  
29 of South American spongeplant (*Limnobium laevigatum*)  
30 populations shall be attempted when detected to the extent feasible.